

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ERICA GREEN,

Plaintiff,

v.

Case No.: 8:23-cv-1039-TPB-AAS

INTUIT, INC.,

Defendant.

ORDER

Plaintiff Erica Green moves for entry of a clerk's default against Defendant Intuit, Inc. for failure to respond to the complaint. (Doc. 19). Ms. Green filed her complaint on May 11, 2023. (Doc. 1). Intuit was served with the summons and complaint on May 12, 2023. (Doc. 3). In response, Intuit filed a motion to dismiss on June 2, 2023, twenty-one days after service. (Doc. 6).

Under Federal Rule of Civil Procedure 12, a defendant must serve an answer within twenty-one days after being served with the summons and complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). However, a party alternatively may assert defenses, including the lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted, by motion. Fed. R. Civ. P. 12(b). Where a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend in the action, and such failure is demonstrated by affidavit or otherwise, only then must the clerk enter the

party's default. Fed. R. Civ. P. 55(a). By moving to dismiss, Intuit has otherwise defended this action.

Intuit's motion to dismiss was timely filed and requests, among other things, dismissal of the complaint for failure to state a claim upon which relief can be granted. (Doc. 6). As such, Intuit properly responded to the complaint and is not required to file an answer until the court disposes of the motion to dismiss. *See Lockwood v. Beasley*, 211 F. App'x 873, 876 (11th Cir. 2006) (per curiam) (finding that a district court did not abuse its discretion by denying the pro se plaintiff's motions for default due to the defendants' failure to file an answer where the defendants filed a motion to dismiss for failure to state a claim).

Accordingly, Ms. Green's motion for a motion for entry of a clerk's default (Doc. 19) is **DENIED**.

ORDERED in Tampa, Florida on September 19, 2023.



AMANDA ARNOLD SANSONE
United States Magistrate Judge

cc:

Erica Green
4719 S. Dawn Meadow Court
Plant City, FL 33566